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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JASON SHAWN RAY,

Defendant and Appellant.

F057864

(Super. Ct. No. VCF216442)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Gary L. Paden, Judge.

Phillip J. Cline, Tulare County District Attorney, Don H. Gallian and Shani D. Jenkins, Assistant District Attorneys, Barbara J. Greaver and John F. Sliney, Deputy District Attorneys, for Plaintiff and Appellant.

William A. Malloy, under appointment by the Court of Appeal, for Defendant and Respondent.

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* Before Levy, Acting P.J., Kane, J., Poochigian, J.

PROCEEDINGS

On January 16, 2009, the prosecutor filed a first amended felony complaint alleging respondent, Jason Shawn Ray, violated Penal Code section 290, subdivision (f)(1)(b)¹ by failing to register as a sex offender between September 18, 2008, and October 12, 2008. The complaint further alleged that Ray had four prior serious felony convictions within the meaning of the three strikes law.²

On April 23, 2009, Ray appeared in court. The prosecutor noted Ray was going to enter a no contest plea. The court noted it was inclined to give Ray the benefit of the doubt and was going to strike the prior serious felony convictions. The court warned Ray that, if he failed to meet the registration requirement, he had four strikes and faced a sentence of 25 years to life.

The court initially noted there was a dispute concerning why Ray went to Oklahoma. The court observed he may have been scared of charges being brought concerning the use of a credit card but his attorney stated appellant left to see his great-grandmother. The court advised Ray that it was giving him the benefit of the doubt on this occasion but would “not bat an eye” to sentence him as a fourth striker if he failed to register as he is supposed to do.

¹ All statutory references are to the Penal Code.

² Because there was no preliminary hearing and no probation report, the factual record in this case consists of a report from the sheriff’s department and one from Oklahoma authorities. The sheriff’s department report states that in 1994, when Ray was then sixteen years old, he forcibly sodomized a seven-year-old child and forced the child to orally copulate him at a YMCA. Ray expressed remorse for his past criminal conduct.

On October 8, 2008, Ray decided to visit his great-grandmother in Oklahoma for her 98th birthday. Ray failed to advise authorities that he was leaving California. He was arrested by Oklahoma authorities before he reached his great-grandmother. Ray told a sheriff’s deputy that he used a friend’s credit card for the trip and spent \$1,300. There is no indication in the record that Ray was charged for taking or using the credit card.

The court advised Ray of his constitutional rights pursuant to *Boykin/Tahl*.³ Ray waived his right to a preliminary hearing and his constitutional rights. The court noted it was going to strike all four strikes over the People's objection. The prosecutor argued Ray's prior convictions were very serious crimes. The court noted Ray's prior convictions were all 14 years old. The parties stipulated to a factual basis for the plea. Ray pled no contest to the allegation that he failed to register as a sex offender, but did not admit the prior serious felony allegations.

The court denied probation and sentenced Ray to one year in county jail. The clerk's minutes indicate the prior serious felony allegations were dismissed, but fail to state any reason for the court's order.

The People filed a timely notice of appeal and contend the trial court abused its sentencing discretion in dismissing the prior serious felony allegations. The People further contend, and Ray concedes, the court erred in failing to state its reasons for dismissing the prior serious felony convictions in the clerk's minutes.

DISCUSSION

The trial court erred in failing to set forth its reasons for dismissing the allegations in the clerk's minutes as required by section 1385 and *People v. Bonnetta* (2009) 46 Cal.4th 143, 152-154 (*Bonnetta*). Because this case must be remanded for a new hearing, we express no definite view at this time as to whether the trial court's finding was sufficient to overcome the abuse of discretion standard of review. (See *People v. Garcia* (1999) 20 Cal.4th 490, 499.) However, based on the facts contained in the appellate record before us, we have reservations of dismissing all four of the strikes based exclusively on the fact the prior convictions occurred over 14 years ago.

The parties agree that the trial court failed to state its reasons for striking the prior serious felony allegations in the clerk's minutes. This duty is mandatory under section 1385, subdivision (a). The court's failure to follow the proper procedure makes its order

³ *Boykin v. Alabama* (1969) 395 U.S. 238; *In re Tahl* (1969) 1 Cal.3d 122.

ineffective. Furthermore, the court may reconsider its original order if it perceives the dismissal to be unwarranted, or, to consider if a dismissal should be ordered for some new or different reason or reasons. (*Bonnetta, supra*, 46 Cal.4th at pp. 153-154.)

Accordingly, we will reverse the trial court's judgment and remand the matter to the trial court for further proceedings consistent with section 1385, subdivision (a) and *Bonnetta*. (*Bonnetta, supra*, 46 Cal.4th at pp. 153-154.)

DISPOSITION

The trial court's judgment is reversed. The case is remanded for the trial court to comply with section 1385, subdivision (a) and *Bonnetta*.